

**UNITED STATES DISTRICT COURT**  
**IN THE WESTERN DISTRICT COURT OF OKLAHOMA**

UNITED STATES OF AMERICA, }  
Plaintiff, }  
v. } 17-CR-239-M  
JERRY DRAKE VARNELL, }  
Defendant. }

## MOTION FOR APPOINTMENT OF CO-COUNSEL

COMES NOW court-appointed CJA counsel Marna Franklin,  
pursuant to the Criminal Justice Act (“CJA”), 18 U.S.C. § 3006A, hereby  
requesting the appointment of a second CJA attorney to aid in Mr. Varnell’s  
defense.

CJA guidelines provide that “[i]n an extremely difficult case where the court finds it in the interest of justice [,]” the court may appoint an additional attorney, and “each attorney is eligible to receive the maximum compensation allowable under the CJA.” VII ADMINISTRATIVE OFFICE OF UNITED STATES COURTS, GUIDE TO JUDICIARY POLICIES & PROCEDURES, par A , chap. II (“CJA Guidelines”) § 230.53.20(a); see also GENERAL ORDER REGARDING THE PLAN OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF

OKLAHOMA FOR THE IMPLEMENTATION OF THE CRIMINAL JUSTICE ACT, 18 U.S.C. § 3006A (“G.O. 15-3”) § €(2)(b) (“The presiding judge may determine that the appointment of more than one counsel is necessary in an extremely difficult, complex, or extended case.”) CJA guidelines do not define “extremely difficult,” and this Circuit has not articulated a standard for determining whether a case is “extremely difficult;” however, the Tenth Circuit has stated that a defendant’s “right to court-appointed counsel is geared toward the goad of ensuring constitutionally *adequate* representation,” and that a court should consider whether the additional attorney is “necessary to an adequate defense.”

*United States v. Clark*, 717 F.3d 790, 811-12 (10<sup>th</sup> Cir. 2013)(emphasis in original).

For the following reasons, this Court should find that the instant case is “extremely difficult” and complex, that an additional attorney is necessary to prepare an adequate defense accordingly, and that it is appropriate to appoint a second CJA panel attorney for Mr. Varnell.

- (1) The defendant had been previously indicted for an offense involving an Attempted Use of an Explosive Device. As of April 17, 2018, the defendant also has been charged with an offense involving the Attempted Use of a Weapon of Mass Destruction.

(2) The discovery is extremely voluminous and continues to be ongoing. Electronic Evidence gathered from multiple electronic devices as well as Facebook, audio and video recordings of Mr. Varnell with government agents and jail recordings provide the bulk of discovery. Although discovery was due the end of January, 2018, discovery has continued to be provided by the government, including disclosures on April 2, 2018, and April 10, 2018. At this point, the defense is in receipt of documents with bates numbers up to 28,014, which does not account for the numerous recordings.

(3) Due to the nature of the defense and charges, this case will present unique challenges for trial presentation, enough so that two adequately prepared counsel should be provided to insure proper representation.

(4) Ms. Kim Taylor, Panel Administrator for the Western District of Oklahoma, has been advised of this request and found the request to be reasonable due to the seriousness of the charges and the complex issues involved in this case. Ms. Taylor has provided suggestions for consideration as to the requested appointment.

(5) Undersigned counsel has consulted with Ms. Vicki Zemp

Behenna, as suggested by Ms. Taylor. Ms. Behenna has years of experience at a criminal law attorney and has served on the CJA Panel in the Western District for many years. Ms. Behenna is willing to accept appointment as co-counsel for Mr. Varnell.

WHEREFORE, due to the complexity of the case, enormous amount of discovery and issues involved in the representation of Mr. Varnell, the undersigned counsel requires the assistance of co-counsel in order to provide adequate representation of the Defendant. Accordingly, she respectfully requests the appointment of Ms. Vicki Zemp Behenna to this matter in the interest of justice.

Respectfully submitted,

s/Marna Franklin  
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CERTIFICATE OF SERVICE

I hereby certify that on the 2<sup>nd</sup> day of May, 2018, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing to:

Matthew Dillon, Mark R. Stoneman  
Assistant U.S. Attorneys  
210 West Park Avenue, Suite 400  
Oklahoma City, OK 73102

s/Marna Franklin